

# PLANNING COMMISSION MINUTES

October 30, 2002

## CALL TO ORDER:

Chairman Vlad Voytilla called the meeting to order at 7:02 p.m. in the Beaverton City Hall Council Chambers at 4755 SW Griffith Drive.

## ROLL CALL:

Present were Chairman Vlad Voytilla, Planning Commissioners Bob Barnard, Gary Bliss, Eric Johansen, Dan Maks, Shannon Pogue and Scott Winter.

Development Services Manager Steven Sparks, AICP, Senior Planner John Osterberg, Assistant City Attorney Ted Naemura, and Recording Secretary Sandra Pearson represented staff.

The meeting was called to order by Chairman Voytilla, who presented the format for the meeting.

## VISITORS:

Chairman Voytilla asked if there were any visitors in the audience wishing to address the Commission on any non-agenda issue or item. There were none.

## STAFF COMMUNICATION:

Staff indicated that there were no communications.

## OLD BUSINESS:

Chairman Voytilla opened the Public Hearing and read the format for Public Hearings. There were no disqualifications of the Planning Commission members. No one in the audience challenged the right of any Commissioner to hear any of the agenda items, to participate in the hearing or requested that the hearing be postponed to a later date. He asked if there were any ex parte contact, conflict of interest or disqualifications in any of the hearings on the agenda. There was no response.

1           **CONTINUANCES:**

2

3           **A. SALEM COMMUNICATIONS BROADCAST TOWER**

4           The proposed development is generally located west SW Oleson Road  
5           and east of SW Scholls Ferry Road on the north side of SW Vermont  
6           Street. The development site is specifically identified as Tax Lot 4000 of  
7           Washington County Tax Assessor's Map 1S1-13DC. The affected parcel  
8           is zoned Urban Standard Density (R-7) and totals approximately 12.8  
9           acres in size.

10

11           **1. CUP 2001-0033: Conditional Use Permit (Public Hearing -**  
12           **Use)**

13           The applicant requests Planning Commission approval of a  
14           Conditional Use Permit (CUP) to place a second AM radio broadcast  
15           tower upon the subject site. A Conditional Use Permit is required in  
16           order to locate a utility facility within the R-7 zone. The proposed  
17           AM radio broadcast tower is a utility facility. A decision for action  
18           shall be based upon the approval criteria listed in Section  
19           40.05.15.2.C. of the City's Development Code.

20

21           **2. CUP 2001-0032: Conditional Use Permit (Public Hearing -**  
22           **Height)**

23           The applicant requests approval of a Conditional Use Permit (CUP)  
24           to allow an AM radio broadcast tower of approximately 260-feet in  
25           height, to exceed the 30-foot building height standard of the City of  
26           Beaverton's R-7 zoning district. Conditional Use Permits to exceed a  
27           maximum height of a zoning district are generally reviewed  
28           administratively; however, the applicant has requested that the  
29           Planning Commission make the decision on this application. A  
30           decision for action shall be based upon the approval criteria listed in  
31           Section 40.05.15.1.C of the City's Development Code.

32

33           **3. TPP 2002-0003 : Tree Preservation Plan (Public Hearing)**

34           The applicant requests Tree Preservation Plan (TPP) approval in  
35           order to remove trees and impact significant natural resources on the  
36           subject site. The proposed TPP will affect one (1) City designated  
37           Significant Grove, NX-03, which contains significant trees and  
38           natural resources. Pursuant to Section 40.75.15.1.A.3 & 4, the  
39           Planning Director has determined that the proposed TPP is within  
40           the jurisdiction of the Planning Commission's review. The Planning  
41           Commission will review the overall design of this request. A decision  
42           for action shall be based upon the approval criteria listed in Section  
43           40.75.15.1.C.3.a and 40.75.15.1.C.4.a & b of the City's Development  
44           Code.

1 Commissioners Johansen, Winter, Bliss, and Maks and Chairman  
2 Voytilla indicated that they had visited and were familiar with the site  
3 and had no contact with any individual(s) with regard to these  
4 applications.

5  
6 Commissioners Barnard and Pogue stated that they are familiar with  
7 the site from a previous application and have not had contact with any  
8 individual(s) with regard to these applications.

9  
10 Clarifying that testimony would be received on all three applications  
11 simultaneously, Senior Planner John Osterberg presented the Staff  
12 Reports and briefly summarized the three applications associated with  
13 this proposal, observing that these applications have been revised to  
14 provide for a 199-foot tower that would have less impact upon the  
15 neighborhood than the originally proposed 260-foot tower with a  
16 different design. He described staff's review of the proposal and  
17 findings, discussed the various materials and exhibits that had been  
18 submitted, entered into the record recently received materials from  
19 Cynthia M. Jacobson with regard to the minimum permissible tower  
20 height, dated October 24, 2002, and described other communications  
21 dated from October 23, 2002 through October 29, 2002. He mentioned  
22 a communication received October 30, 2002, from Daniel J. Durkin.  
23 Concluding, he observed that because not all applicable criteria had  
24 been met, staff recommends denial of all three applications, and  
25 offered to respond to questions.

26  
27 Observing that it had been difficult for him to find justification with  
28 regard to both public and private utilities meeting certain provisions of  
29 the Development Code, Commissioner Bliss referred to page 10 of the  
30 Staff Report concerning the CUP with regard to use, and requested  
31 clarification of how the Planning Director had determined that a  
32 Conditional Use Permit is appropriate in this case for a private utility.

33  
34 Mr. Osterberg deferred this question to Development Services  
35 Manager Steven Sparks for review and comment.

36  
37 Commissioner Bliss referred to Section 60.40.25 of the former  
38 Development Code, which addresses uses requiring spatial regulations,  
39 observing that under certain circumstances, the most stringent  
40 regulations are in effect. He discussed the reference to reasonable  
41 compatibility and expressed his opinion that this criterion has not been  
42 adequately addressed, requesting clarification of how staff had made  
43 this determination.

44

1 Development Services Manager Steven Sparks discussed the former  
2 Planning Director's Interpretation (PDI) that had been issued in 1996,  
3 establishing certain types of utility-type uses. He pointed out that  
4 although this decision had not actually determined that a radio tower  
5 is a utility facility, the PDI had been issued specifically with regard to  
6 a cellular communications tower, adding that since that time, this type  
7 of use had been addressed in this same manner.

8  
9 Commissioner Maks observed that a PDI generally occurs and is  
10 enforced in the absence of adequate direction with regard to certain  
11 uses within the Development Code, emphasizing that it is necessary to  
12 make a decision to address these uses.

13  
14 Mr. Sparks explained that a PDI serves several purposes, one of which  
15 is a formal recognition that such a use is interpreted as the equivalent  
16 of a use, which is listed within the Development Code.

17  
18 Commissioner Maks emphasized that the Development Code is  
19 basically silent with regard to certain issues.

20  
21 Mr. Osterberg noted that staff had determined that Criterion 3 had not  
22 been met.

23  
24 Commissioner Bliss stated that while he agrees that Criterion 3 had  
25 not been met, his rationale for reaching the same conclusion differs  
26 from that of staff.

27  
28 Commissioner Johansen pointed out that development in a  
29 residentially zoned area is residential development and requested  
30 clarification of how staff had determined whether this proposal is a  
31 permitted or conditional use within a residential zoning district.

32  
33 Mr. Osterberg mentioned that Commissioner Johansen had described  
34 several of the residential plan policies that are reviewed under  
35 Criterion 2 for Conditional Use Permits.

36  
37 Referring to page 14 of the Staff Report, specifically Objective 3.4.2.11,  
38 which states that various residential uses should be protected from the  
39 intrusion of incompatible uses in order to preserve and stabilize values  
40 and the character of the area, Commissioner Johansen pointed out  
41 that property values are not a criterion with regard to making a  
42 decision on a Conditional Use Permit. He requested clarification with  
43 regard to whether staff believes that stabilized values refer to  
44 something other than property values.

1 Mr. Osterberg advised Commissioner Johansen that the objective  
2 references the stabilization of values, observing that this does not  
3 necessarily mean property values. He mentioned a recently submitted  
4 communication received from a real estate broker who had indicated  
5 that this proposal could have a detrimental effect upon property values  
6 in the area.

7  
8 Commissioner Johansen questioned whether Mr. Osterberg is aware of  
9 any cellular towers that exceed the height of 150-feet or even 100-feet  
10 within the City of Beaverton.

11  
12 Mr. Osterberg pointed out that several cellular towers range between  
13 75-feet and 80-feet in height.

14  
15 Commissioner Maks mentioned that the cellular tower near the  
16 *Denney's Restaurant* on SW Hall Boulevard is 100-feet in height.

17  
18 Commissioner Johansen observed that he had been referring to a  
19 residential, rather than commercial, setting.

20  
21 Commending Mr. Osterberg for preparing a good Staff Report,  
22 Commissioner Maks referred to page 9 of the Staff Report for CUP  
23 2001-0033, specifically Existing Site Conditions, requesting an  
24 amendment, as follows: "The site is primarily is within the Fanno  
25 Creek floodplain..." He referred to the first paragraph of page 11 of  
26 the Staff Reports for both CUP 2001-0033 and CUP 2001-0032,  
27 requesting an amendment, as follows: "Staff have listed the site  
28 development requirements of the ~~R-5~~ **R-7** zone and have indicated the  
29 applicant's proposal..." He referred to paragraph 5 of page 16 of the  
30 Staff Report for CUP 2001-0033, requesting clarification that neither  
31 the US Army Corp of Engineers (Corps) and the Oregon Division of  
32 State Lands (DSL) has a problem with the development, as proposed,  
33 and/or their permit requirements will be met by the application.

34  
35 Mr. Osterberg advised Commissioner Maks that the Corps had already  
36 approved the proposal and that DSL has indicated that no permit with  
37 regard to this development is required from them, adding that Clean  
38 Water Services (CWS) has approved the development as well.

39  
40 Commissioner Maks questioned the ownership of the property.

41  
42 Mr. Osterberg informed Commissioner Maks that the property  
43 (approximately 12 to 13 acres) is owned by Salem Communications  
44 Corporation, observing that there is sometimes confusion between this

1 property and the property known as the Oregon Episcopal School  
2 (OES) Marsh, which is sometimes referred to as the Montclair Marsh  
3 (approximately 30 acres).

4  
5 Commissioner Maks referred to page 19 of the Staff Report for CUP  
6 2001-0033, which references wildlife habitat, requesting an  
7 explanation of the statement that under the Salem Communications  
8 proposal, the natural resource area, which currently provides adequate  
9 wildlife habitat, will be improved by the removal of non-native  
10 vegetation and by the planting of resource appropriate plantings, in  
11 coordination with the OES Marsh planting plan.

12  
13 Observing that the OES Marsh project includes a portion of the Salem  
14 Communications site, Mr. Osterberg explained that the current Salem  
15 Communications application proposes additional mitigation plantings,  
16 above and beyond what had been approved for the OES Marsh project.  
17 He advised Commissioner Maks that staff has recommended denial of  
18 the TPP based upon two specific criterion that address potential  
19 disease of the trees and a potential hazard to the health and welfare of  
20 the public.

21  
22 Commissioner Maks referred to page 22, specifically Policy 7.4.2(k) of  
23 the Staff Report for CUP 2001-0033, which states that a scenic view  
24 inventories shall be maintained and updated. He mentioned that page  
25 28 reviews the submittals with regard to the FCC, and questioned  
26 whether the FCC imposes requirements upon the applicant during or  
27 following this process.

28  
29 Mr. Osterberg advised Commissioner Maks that this information is  
30 briefly summarized in the Staff Report, noting that the FCC is the  
31 appropriate regulatory body for this issue, and that they have both the  
32 necessary technical expertise and a licensing process.

33  
34 Commissioner Maks requested verification of whether any FCC  
35 requirements have to be in place prior to land use approval.

36  
37 Mr. Osterberg advised Commissioner Maks that FCC requirements do  
38 not have to be in place prior to land use approval, adding that staff  
39 concludes that the applicant is required to obtain a license from the  
40 FCC, who implements standards from the Environmental Protection  
41 Agency (EPA).

42  
43 Commissioner Maks pointed out that other requirements might have  
44 to be fulfilled following land use approval.

1 Referring to the Staff Report for CUP 2001-0032 (Height), specifically  
2 page 14, Commissioner Maks questioned whether staff has changed  
3 their position with regard to their recommendation on this application  
4 with the new submittal that provides the evidence documenting the  
5 need for the 196 feet that had been proposed.

6  
7 Observing that staff had reviewed the letter and material that had  
8 been provided, Mr. Osterberg noted that staff is not prepared to make  
9 that finding at this time. He expressed his opinion that this should be  
10 addressed by the applicant's radio engineer, adding that he is not  
11 certain that staff possesses the expertise to interpret that document.

12  
13 Commissioner Maks referred to page 15 of the Staff Report for CUP  
14 2001-0032, which states that staff finds the proposed height of 199 feet  
15 is substantial and incompatible with the residential character and  
16 structure of heights found in the area. Pointing out that the Planning  
17 Commission approves cellular towers in R-5 and R-7 zoning districts  
18 on a regular basis, he mentioned that while these cellular towers are  
19 basically limited to less than 100 feet in height, he would like some  
20 clarification with regard to what staff has determined is substantial.

21  
22 Mr. Osterberg clarified that he would consider this proposal as being  
23 twice as high or greater than virtually all applications for cellular  
24 towers that have been received and reviewed in recent years, adding  
25 that in addition to far exceeding what is currently allowed within the  
26 City of Beaverton, the proposal provides for what he described as a  
27 lattice-style tower that would have a greater impact than that of a  
28 typical cellular tower.

29  
30 Commissioner Maks clarified that staff is recommending denial of CUP  
31 2001-0033 (Use) based upon potential interference with neighborhood  
32 telephone lines and televisions, etc. He pointed out that with regard to  
33 CUP 2001-0032 (Height), staff has recommended denial based upon  
34 their determination that this proposal would have more than a  
35 minimal impact upon the neighboring residences and that it is  
36 necessary for the applicant to provide more screening. With regard to  
37 TPP 2002-0003 (Tree Preservation Plan), he stated that the  
38 recommendation for denial is based upon the proposed removal of trees  
39 that have been determined to be significant and are not related to the  
40 construction of the tower, adding that these trees also do not meet the  
41 criteria with regard to disease or safety issues.

42  
43 Mr. Osterberg emphasized that while the applicant has not proposed  
44 the removal of any trees located outside of the impact area of their

1 project, there are no circumstances that actually necessitate the  
2 removal of these trees because they are hazardous or diseased.

3  
4 Referring to staff's recommendation for denial of the Tree Preservation  
5 Plan, Commissioner Johansen requested clarification with regard to  
6 whether this recommendation is specific to the need to address all  
7 three criteria within the Significant Natural Resource Area (SNRA).

8  
9 Mr. Osterberg explained that generally the Planning Commission does  
10 not deal with this particular issue, observing that they typically deal  
11 with a significant grove that is not coupled with an SNRA.

12  
13 Observing that many individuals are in attendance and wish to testify  
14 with regard to this proposal, Chairman Voytilla pointed out that the  
15 applicant would be limited to a 20-minute presentation, adding that  
16 members of the public who testify would be limited to three minutes.  
17 Emphasizing that members of the Planning Commission have taken  
18 the time to review all materials and information they have received  
19 with regard to this issue prior to this hearing, he encouraged those  
20 who testify to utilize their time appropriately and provide information  
21 that has not already been submitted. He explained that any  
22 regulations that might be affected by Federal or State regulations,  
23 such as a soil contamination issue, are not within the purview of the  
24 Planning Commission, and encouraged anyone who testifies to be  
25 respectful of what is considered applicable criteria for review at this  
26 level. Noting that he would not allow any individual to donate time to  
27 another individual, he stated that any bonafide group, such as a NAC,  
28 would be granted additional time, adding that this would need to  
29 involve one of the Chairs or Vice-Chairs. He clarified that any  
30 individual providing testimony to counter professional testimony,  
31 written or oral, that is in the record, must be able to provide  
32 documentation that he, she, or a professional whose services have been  
33 retained for this purpose has equivalent expertise in that particular  
34 field. Concluding, he mentioned that anyone testifying would have to  
35 complete and submit a yellow testimony card.

36  
37 **APPLICANT:**

38  
39 **ROB DOUGLASS**, Vice-President of Real Estate, introduced himself  
40 and Vice-President of Engineering John Ehde, both of whom represent  
41 *Salem Communication Corporation*, and described their experience in  
42 siting and locating radio broadcast stations. Observing that KPDQ  
43 AM has been in existence since 1947, he pointed out that the applicant



1 has owned this facility since 1986. He provided copies of documents,  
2 as follows:

- 3
- 4 1. 8 ½" x 11" color illustration of an AM radio broadcast tower  
5 currently existing in Hayward, California;
- 6 2. Map of Portland Metro area illustrating the existing and  
7 proposed nighttime range of KPDQ AM; and
- 8 3. Packet of materials, information and documentation from Clean  
9 Water Services, including two letters from Doug Gates, P.E.,  
10 Senior Engineer, dated May 22, 2002, and May 28, 2002.
- 11

12 Mr. Douglass explained that this particular process had begun  
13 approximately one year ago, noting that the program addresses family  
14 values and is basically aimed at the Beaverton community and the  
15 regional area of Portland. Observing that the original proposal had  
16 provided for a 260-foot tower, the equivalent of what currently exists  
17 on the site, he mentioned that this tower would be both painted and lit.  
18 He pointed out that due to heavy opposition, the applicant had revised  
19 their application to what is shown on the illustration of the AM radio  
20 broadcast tower in Hayward, California, which he described as a very  
21 environmentally sensitive area. Emphasizing that this proposal  
22 represents the best that can be offered for an AM radio broadcast  
23 tower, he pointed out that the height of the proposed tower had been  
24 reduced to 199 feet, adding that the FAA requires lighting and  
25 painting of any facility that exceeds 199 feet in height. He mentioned  
26 that because this would create a degradation of the signal, the  
27 applicant would prefer the originally proposed 260-foot tower, adding  
28 that this revision had been an attempt to compromise with staff and  
29 mitigate potential impact. He stated that any facility less than 196  
30 feet in height could not be licensed by the FCC, noting that it is  
31 necessary for the applicant to obtain land entitlements, FCC approval,  
32 and FAA approval. He clarified that adding this additional tower  
33 would create a directional signal, rather than the existing non-  
34 directional signal, allowing the station to reach houses within the  
35 contour, which would be an additional 398,000 people at night.  
36 Concluding, he emphasized that it would possible to avoid impacting  
37 the protected tree grove, mentioned that the owners of the property,  
38 Edward Atsinger III and Stuart Epperson, are also willing to grant  
39 easements to Clean Water Services to assist in the clean up and  
40 enhancement of Fanno Creek, and offered to respond to questions.

41  
42 Referring to page 17 of the applicant's submittal, Commissioner Maks  
43 pointed out that he has an issue with the first paragraph, which  
44 addresses Section 3.4.2 Residential Objectives. Observing that Section

1        2.3.2.1 indicates that the primary focus of residential development  
2        should be towards maintaining or creating maximum livability and  
3        promoting quality living areas, he requested how this proposal  
4        addresses this criterion.  
5

6        Noting that under the existing residential zoning the applicant would  
7        have the ability to remove more trees than proposed by this project,  
8        Mr. Douglass pointed out that rather than desecrating or degrading  
9        the property, this additional tower would basically maintain the  
10       habitat that already exists at the site.  
11

12       Referring to page 19 of the applicant's submittal, specifically the  
13       response to Criterion 1.4.1 – Residential Policies, which provides that  
14       all non-residential uses should recognize and respect the character and  
15       quality of the residential area in which they are located and be so-  
16       designed, Commissioner Maks pointed out that some of the neighbors  
17       have expressed their disagreement with regard to compatibility.  
18

19       Observing that he has been locating towers for 18 years, Mr. Douglass  
20       stated that throughout the entire country, most often there are sites on  
21       which AM towers exist, move out, and build around the existing sites.  
22       He emphasized that the applicant does not find these towers  
23       incompatible with residences, adding that while these unmanned  
24       facilities create no additional traffic, pollutants, noise or crime, they  
25       are providing much-needed and desired open space in undeveloped and  
26       unpaved areas.  
27

28       Commissioner Maks referred to page 39 of the applicant's submittal,  
29       specifically Criterion 7.3.2.1.B, which states that the City should  
30       cooperate with and assist property owners in maintaining and  
31       upgrading these issues for their potential aesthetic wildlife or  
32       recreational value, and questioned how the applicant had determined  
33       that this is not applicable to the application.  
34

35       Mr. Douglass concurred with Commissioner Maks' observation, noting  
36       that this issue is applicable to the application.  
37

38       Commissioner Maks questioned why AM stations are required to drop  
39       their power at night.  
40

41       Observing that this issue is related to the ionosphere, Mr. Douglass  
42       deferred Commissioner Maks' question to Mr. Ehde.  
43

1        **JOHN EHDE**, Vice-President of Engineering for *Salem*  
2        *Communication Corporation*, explained that low frequency radio waves  
3        propagate differently between the daytime and nighttime hours,  
4        adding that this is related to how the ionosphere changes and reflects  
5        those waves. Observing that during the daytime the signal is basically  
6        what is considered a ground wave, he pointed out that at nighttime,  
7        these signals actually bounce. He pointed out that each radio station  
8        has certain boundaries within it much operate, and compared this to a  
9        homeowner who must maintain his fence within the boundaries of his  
10       own property. Emphasizing that KPDQ AM is not permitted to  
11       encroach upon another radio station's property or contour line, he  
12       mentioned that the nighttime changes within the ionosphere causes a  
13       station to encroach upon the contour lines of other stations, making it  
14       necessary to reduce the power.

15  
16       Commissioner Maks referred to page 9 of the document OET-65,  
17       requesting a brief definition of the terms Occupational Controlled  
18       Exposure and General Population Uncontrolled Exposure.

19  
20       Mr. Ehde explained that with AM radio signals, the public exposure  
21       and Occupational Controlled Exposure has exactly the same value,  
22       adding that this differs with FM radio signals, and that the level that  
23       had been determined as a totally and conservatively safe level of RF  
24       energy is the same for both occupational as the public.

25  
26       Referring to page 53 of the applicant's submittal, Commissioner Maks  
27       noted that restricting access to certain areas where high or dangerous  
28       RF levels may be present is generally the simplest measure for  
29       addressing any problem. He mentioned a document that evaluates  
30       compliance with FCC guidelines for human exposure, noting that page  
31       1 indicates that areas inside the fenced enclosure or closer than 12  
32       inches to the copper tubing leading the antenna to the unit and  
33       connecting to the tower, and closer than three feet to the transmitting  
34       tower do exceed 100% of the e-field NMA for occupational controlled  
35       exposure, adding that while this would indicate overexposure, this  
36       would only occur within that fenced area.

37  
38       Mr. Ehde explained that this exposure could be tolerated for a brief  
39       amount of time, during which an employee is able to safely enter, take  
40       a reading, and exit the area, without exceeding the maximum  
41       exposure, emphasizing that this is all within the fenced area.

42  
43       Commissioner Maks requested clarification of whether his favorite  
44       squirrel would be harmed by sitting on that fence.

1 Mr. Ehde advised Commissioner Maks that sitting on the fence would  
2 not harm a squirrel.

3  
4 Commissioner Maks questioned how something that would be harmful  
5 to humans would not be harmful to a squirrel.

6  
7 Mr. Ehde stated that he is not certain whether a squirrel within 12  
8 inches of or climbing the tower would be harmed, adding that the  
9 existing fenced area is approximately ten feet by ten feet in size.

10  
11 Referring to Exhibit 4.18, which consists of materials submitted by the  
12 public, Commissioner Maks mentioned that this indicates an assump-  
13 tion that the FCC is the lead agency since they will license the facility.  
14 FCC requires, at a minimum, that an Environmental Assessment (EA)  
15 or potentially an Environmental Impact Statement (EIS) be prepared  
16 for radio towers sited in wetlands. He questioned whether this is true  
17 and at which point this issue would be addressed, if necessary.

18  
19 Mr. Ehde advised Commissioner Maks that he is not knowledgeable  
20 with requirements specifically addressing wetlands.

21  
22 Mr. Douglass pointed out that in his 18 years of experience, wetlands  
23 issues have been typically been addressed by Planning Commissions,  
24 City Councils and the Army Corps of Engineers, adding that he has  
25 never been aware of the FCC ruling on this type of an issue. He  
26 pointed out that because the wetlands actually propagate the AM radio  
27 signals, many of these sites have been deliberately located in order to  
28 specifically coexist with these wetlands.

29  
30 On question, Mr. Ehde advised Commissioner Maks that the smaller  
31 growth, rather than the trees, could potentially prevent the applicant  
32 from doing a good job in locating the necessary equipment underneath  
33 the ground. He explained that a certain tool that vibrates the ground  
34 allows the technician to place the copper wire beneath the surface  
35 without actually opening up the ground and damaging the root  
36 structure of any trees. Observing that this involves only a one-time  
37 process, he emphasized that the smaller growth vegetation would then  
38 have the opportunity to grow back.

39  
40 Noting that he appreciates the effort to reduce the number of trees to  
41 be removed, Commissioner Maks informed Mr. Ehde that he prefers to  
42 view pictures and illustrations that allow him a better understanding  
43 of the proposal, and specifically which trees would remain and which  
44 trees would be removed.

1 Mr. Douglass suggested the possibility of preserving all vegetation  
2 beyond 50 feet of the tower base.

3

4 Commissioner Maks expressed his opinion that the applicant could do  
5 a better job of addressing the screening issue.

6

7 Pointing out that it is difficult to screen a 199-foot tower, Mr. Douglass  
8 stated that the applicant would like to receive direction from staff  
9 indicating their preference for addressing this issue.

10

11 Commissioner Maks mentioned concern with maintaining the quality  
12 of the existing neighborhood, noting that the key issues with regard to  
13 staff's recommendation for denial have not been addressed adequately.

14

15 Mr. Douglass indicated that the applicant has and would continue to  
16 make every reasonable effort to correct interference issues with the  
17 neighbors in the adjacent neighborhood, adding that he intends to  
18 obtain the names, telephone numbers and other relevant information  
19 of those individuals with these concerns. Referring to concerns with  
20 maintaining the character of the neighborhood, he expressed his  
21 opinion that maintaining 12 acres of undeveloped property should  
22 address this issue. He emphasized that the applicant is more than  
23 happy to go beyond what is required by FCC regulations to address  
24 interference issues.

25

26 Commissioner Johansen mentioned that with regard to the  
27 interference issues, and questioned whether the potential resolution of  
28 these problems would require the cooperation of the neighbors or could  
29 be done on site.

30

31 Mr. Douglass emphasized that he is unable to address any problem  
32 unless he knows it exists, adding that even a solution involves some  
33 cooperation. He pointed out that this issue involves only 150 watts,  
34 pointing out that a microwave or hairdryer utilizes more power.

35

36 Mr. Ehde explained that the solution to the interference complaints  
37 basically involve the telephone, adding that this would be largely  
38 addressed through the use of filters, which would be provided by the  
39 station. He pointed out that these filters provide an adequate solution  
40 in approximately 90% of the complaints.

41

42 Emphasizing that this land use action (CUP) runs with the land,  
43 Commissioner Johansen questioned how issues with a future owner  
44 could be addressed, specifically how neighbors would have continual

1 protection from potential interference if this impact can not be  
2 addressed on site.

3  
4 Observing that some of these issues would be addressed by the FCC  
5 through denial of the required license, Mr. Ehde pointed out that all of  
6 the facilities he had been involved with placed high emphasis upon  
7 resolving these issues within the neighborhood. Noting that he has  
8 been involved with projects involving 50,000-watt radio stations  
9 surrounded by homes, he emphasized that while these interference  
10 problems had been adequately addressed it is necessary to first be  
11 aware that a problem exists.

12  
13 Commissioner Barnard questioned whether any of the individuals who  
14 had submitted correspondence with regard to interference issues has  
15 contacted the applicant.

16  
17 Mr. Douglass advised Commissioner Barnard that the applicant  
18 maintains a log of these complaints, adding that he would be happy to  
19 obtain the names and numbers of anyone with a complaint.

20  
21 Commissioner Barnard emphasized that there is a large stack of  
22 correspondence from neighbors who are indicating that they have  
23 experienced interference, and questioned whether the applicant is  
24 indicating that none of these individuals have ever made any contact  
25 with the applicant in an attempt to resolve their interference issues.

26  
27 Mr. Ehde stated that the applicant would be willing to match up this  
28 detailed log with those individuals who have complained of  
29 interference, adding that the FCC requires this log and that any  
30 complaints must be appropriately addressed.

31  
32 Chairman Voytilla referred to the letters based upon the Neighborhood  
33 Meetings, observing that some of these individuals had implied a long-  
34 standing concern with regard to this issue, and questioned whether the  
35 applicant had made any direct attempt to contact these individuals.

36  
37 Mr. Ehde stated that a year ago, the applicant had prepared a flyer,  
38 gone door to door and left this information with all of the neighbors in  
39 the area of the transmitter site. Observing that there had been  
40 numerous responses, he pointed out that the engineer feels that all but  
41 some very difficult cases had been adequately addressed. He  
42 mentioned that there had been several situations in which it had not  
43 been possible to make contact, emphasizing that some individuals had  
44 simply not returned their calls.

1 Chairman Voytilla pointed out that greater than 40 letters of  
2 complaint had been submitted into the record, and requested  
3 clarification with regard to how issues had been addressed for Oregon  
4 Episcopal School and Montclair Elementary School.  
5

6 Commissioner Johansen referred to page 13 of the Staff Report for TPP  
7 2002-0003, observing that of 48 trees proposed for removal, none are  
8 within the Significant Natural Resource Area (SNRA) or described as  
9 hazardous by the arborist.  
10

11 Mr. Douglass advised Commissioner Johansen that it would not be  
12 necessary to remove any of the trees within the SNRA.  
13

14 Commissioner Johansen pointed out that no arborist report is  
15 available to confirm that none of the trees within the SNRA would  
16 need to be removed.  
17

18 Mr. Sparks noted that in response to Commissioner Johansen's  
19 questions with regard to removal of trees within the SNRA, because  
20 the entire property is an SNRA, there would be removal of some trees  
21 within this area, although this would presumably involve fewer than  
22 48 trees.  
23

24 Commissioner Johansen stated that the criterion is not met if none of  
25 these trees have been determined to be hazardous.  
26

27 Mr. Sparks pointed out that this decision would be a judgment with  
28 regard to the Arborist's Report, adding that this information should be  
29 submitted to the Planning Commission. He reiterated that he had  
30 simply attempted to clarify that because the entire property involves  
31 an SNRA, any tree removal would occur within this SNRA.  
32

33 Commissioner Pogue referred to the Nighttime Comparison Map that  
34 had been provided by the applicant and requested clarification of the  
35 nighttime hours involved.  
36

37 Mr. Douglas pointed out that this had just changed with Daylight  
38 Savings Time.  
39

40 Mr. Ehde indicated that the FCC publishes what is considered sunup/  
41 sundown, observing that there are certain requirements that must be  
42 met to address these specific hours, which change on a monthly basis.  
43

1 Commissioner Pogue questioned whether the addition of a second  
2 tower has the potential to create interference where none had existed  
3 previously.

4  
5 Mr. Douglass advised Commissioner Pogue that the nighttime power  
6 would still be less than that generated during the daytime,  
7 emphasizing that there should be no additional interference, and  
8 explained that this power would also be distributed between two  
9 separate towers over a larger area, pointing out that there should  
10 actually be less interference, rather than more.

11  
12 Mr. Ehde mentioned that there are certain parameters with regard to  
13 necessary mitigation for interference, and referred to what is known as  
14 the "One Volt Blanketing Area", noting that these issues must be  
15 resolved at the applicant's cost for a period of one year. He pointed out  
16 that assuming all issues should be resolved within the first year, while  
17 there are no further obligations on the part of the applicant, Salem  
18 Communications has never requested reimbursement from a resident  
19 for a filter or any other mitigation measures, emphasizing that this is  
20 not their policy.

21  
22 Observing that the current tower generates 500 watts at night and  
23 that the total volts with the second tower would be 750 watts,  
24 Commissioner Barnard requested how interference could be reduced  
25 with a 50% increase in power, and questioned what the amount of  
26 power would be during the daytime.

27  
28 Mr. Douglass advised Commissioner Barnard that the one tower would  
29 generate 1,000 watts during the daytime, emphasizing that the  
30 application only proposes to increase the nighttime power generated  
31 from 500 watts to 900 watts, which would be distributed between two  
32 towers. He explained that the proposed new tower would not even be  
33 operating during the daytime, pointing out that it would be cancelled  
34 out electronically and would have no signal during those hours.

35  
36 Referring to the limits of the physical facility, Chairman Voytilla  
37 requested clarification of limits of the amount of power able to be  
38 generated by this antenna.

39  
40 Mr. Ehde informed Chairman Voytilla that the FCC imposes  
41 limitations on the amount of power generated by an antenna.

42  
43 Observing that he is aware that there are permitting issues with  
44 regard to the FCC, Chairman Voytilla emphasized that he would like



1 information with regard to the amount of power the equipment itself is  
2 capable of generating.

3

4 Mr. Ehde responded that the applicant possesses a 1000-watt  
5 transmitter.

6

7 Mr. Douglass advised Chairman Voytilla that theoretically, it would be  
8 possible to install a 50,000-watt transmitter and feed it into the tower,  
9 although this would cause a lot of interference and cost him his license.

10

11 Assistant City Attorney Ted Naemura observed that this issue involves  
12 the fact that this particular use and field is both heavily regulated and  
13 heavily pre-empted by Federal regulations.

14

15 Pointing out that the applicant possess \$50,000 worth of software, Mr.  
16 Ehde mentioned that it is necessary to consider any means of  
17 increasing, changing, or moving power, emphasizing that they are not  
18 permitted to exceed the limitations imposed by the FCC.

19

20 Mr. Douglass suggested imposing a Condition of Approval limiting the  
21 power to 1000 watts per day, emphasizing that the applicant's only  
22 goal is to increase the nighttime power for those individuals who listen  
23 during those times.

24

25 **PUBLIC TESTIMONY:**

26

27 **WILLIAM HOFFORD** discussed his concerns with interference  
28 issues, and submitted a petition with regard to this interference,  
29 bearing five signatures. He pointed out that he is also concerned with  
30 roads in the area, observing that while this might not technically be  
31 considered a road, there is an approximately nine-foot wide swath  
32 providing access to the first tower that is accessible to vehicles.

33

34 Commissioner Barnard questioned whether Mr. Hofford had  
35 personally contacted Salem Communications in an attempt to resolve  
36 his own personal interference issues.

37

38 Mr. Hofford responded that he had not experienced any interference.

39

40 9:04 p.m. to 9:12 p.m. – recess.

41

42 Reiterating that individual public testimony would be limited to three  
43 minutes, Chairman Voytilla urged those testifying not to be  
44 redundant.

1        **MINDY CLARK** expressed her disagreement with the applicant's  
2 description of how interference issues have been addressed in the past,  
3 described problems she had experienced with her telephone, and  
4 pointed out that the applicant's response had been to indicate that it is  
5 not their problem. She pointed out at their suggestion, she had  
6 purchased a filter from *Radio Shack*, emphasizing that this had not  
7 resolved the problem.

8  
9        Commissioner Maks questioned whether she is experiencing  
10 interference in areas besides her telephone.

11  
12        Ms. Clark advised Commissioner Maks that this interference also  
13 affects her computer speakers and radio.

14  
15        Chairman Voytilla requested clarification of how far from the existing  
16 tower her home is located.

17  
18        Observing that she is not certain of the distance, Ms. Clark informed  
19 Chairman Voytilla that hers is the second house in from the edge of  
20 the wetland.

21  
22        Commissioner Pogue requested further information with regard to  
23 when this interference occurs.

24  
25        Noting that most of the interference occurs during the daytime, Ms.  
26 Clark expressed concern that this nighttime power increase could  
27 potentially create a 24-hour problem.

28  
29        **DEVEREAUX DION** concurred with the comments of his wife, Mindy  
30 Clark.

31  
32        **KENT BAUGHMAN** mentioned that he manages the complex in  
33 which Ms. Clark resides, observing that he had purchased the property  
34 in 1995 primarily because of its proximity to this aesthetically  
35 beautiful wetland and because it is a quiet area. He expressed his  
36 objection to the installation of an additional tower, pointing out that  
37 additional towers would make his property less desirable.

38  
39        Commissioner Winter questioned whether the same level of  
40 interference has been experienced throughout the complex.

41  
42        Observing that there has been no interference with television, Mr.  
43 Baughman informed Commissioner Winter that telephone interference  
44 is largely dependent upon individual telephone systems, pointing out

1 that while wireless telephones are more of a problem, the applicant  
2 had provided a filter, which had been successful.

3  
4 **EVELYN PEASLEY** explained that while she has experienced no  
5 interference, she lives in this complex because of the aesthetic value  
6 and is concerned with potential interference, wildlife and aesthetics.

7  
8 **ROBERT SMITH** expressed his concern with what he considers to be  
9 an eyesore, adding that he objects to the red lights blinking during the  
10 night. He requested clarification of whether these tall trees absorb the  
11 energy and specifically whether this is why the applicant proposes the  
12 removal of these trees. He discussed the potential to changing the  
13 characteristics of the current interference with the installation of the  
14 second tower. He pointed out that the neighbors in the area had not  
15 even been aware of who they should contact with regard to interference  
16 issues.

17  
18 **WARREN HEBERT** stated that his concerns had been addressed.

19  
20 **LAURI NEWTON**, on behalf of Citizens for Environmentally  
21 Responsible Development, mentioned that she would like some  
22 information with regard to the potential for collocating on the existing  
23 tower. She mentioned she would also like the applicant to address the  
24 possibility of an FCC license potentially overruling any time of  
25 condition that might be included in a land use action with the City of  
26 Beaverton. She pointed out that a significant issue that has not been  
27 discussed involves an Environmental Assessment, adding that the  
28 applicant should be able to provide information with regard to this  
29 issue. She expressed concern that if this is not done at this level it is  
30 likely that it would not be done at all. She briefly discussed the OES  
31 Enhancement Plan, pointing out that she does not believe that Salem  
32 Communications has actually contributed to this effort except for  
33 providing easement if this application is approved. Concluding, she  
34 observed that their effort at mitigation had been to plant 30 trees, she  
35 expressed her opinion that 30 trees is not significant, adding that they  
36 should not attempt to claim any credit for the OES Enhancement Plan.

37  
38 Commissioner Johansen requested clarification of which section of the  
39 Development Code Ms. Newton had cited.

40  
41 Ms. Newton advised Commissioner Johansen that her reference had  
42 been to Development Code Section 9.05.035.C. which states that before  
43 the application may be referred to the Planning Director, an Environ-  
44 mental Assessment Report, prepared by a qualified biologist or other

1 professional qualified to assess particular resource issues on the site  
2 is required.

3  
4 **MICHAEL ANDREA**, Attorney representing Citizens for Environ-  
5 mentally Responsible Development, mentioned that while he had filed  
6 certain documents, he would like to address what he considers the  
7 lynchpin of entire issue, observing that the Conditional Use Permit is  
8 premised on the proposition that the radio tower is a utility substation.  
9 He pointed out that the Staff Reports rely on a section of the Develop-  
10 ment Code that applies by its terms only to public utilities, municipali-  
11 ties, and government agencies. He noted that while he understands  
12 that there has been a Planning Director's Interpretation (PDI) that  
13 extends this with regard to private utilities, there is a fundamental  
14 rule of statutory construction that does not allow adding what has  
15 been omitted. He explained that additionally, there is a specific  
16 provision that addresses private utilities, adding that this immediately  
17 follows the specific provision cited within the Staff Reports.  
18 Emphasizing that this clearly addresses private utilities, he noted that  
19 this is not a private utility. He referred to two definitions within  
20 Chapter 90 of the Development Code, specifically the definitions of  
21 utility and utility infrastructure. He pointed out that these definitions  
22 clarify that utilities are primarily underground, which is not the case  
23 with this application. Referring to a section of the Development Code  
24 which addresses a livable, quality city and aesthetics, he stated that  
25 for this reason, the Conditional Use Permits must be rejected, adding  
26 that the premise that they are based upon, specifically that they are a  
27 utility, is false. He mentioned the issue of property value, observing  
28 that while the planning criteria reference does not actually specify  
29 property value, there are no other values that they could possibly be  
30 referencing, emphasizing that he has an affidavit that demonstrates  
31 that radio towers have an adverse, negative effect upon property  
32 values. Concluding, he offered to respond to questions.

33  
34 Commissioner Maks questioned whether Mr. Andrea practices land  
35 use law.

36  
37 Mr. Andrea advised Commissioner Maks that he practices energy and  
38 business litigation law, adding that this does involve environmental  
39 and land use law.

40  
41 Commissioner Maks questioned whether Mr. Andrea is at all familiar  
42 with Planning Director Interpretations.

43

1 Mr. Andrea informed Commissioner Maks that he is aware of Planning  
2 Director Interpretations.

3

4 Observing that the Planning Commission had received the affidavit  
5 with regard to property values, Commissioner Maks stated that when  
6 they are addressing values, they are addressing everything except  
7 property values. He questioned whether Mr. Andrea has data to  
8 support this affidavit, adding that it is necessary to provide substantial  
9 evidence to support this opinion.

10

11 Agreeing that this document lacks the necessary specific, statistical or  
12 scientific data, Mr. Andrea suggested that this merely provides what  
13 he referred to as anecdotal evidence with regard to some indication of  
14 property values. Emphasizing that the burden of proof is on the  
15 applicant, who has not addressed these issues, he reiterated that radio  
16 towers have an adverse effect upon property values.

17

18 Commissioner Maks agreed that the burden of proof rests with the  
19 applicant, observing the interpretation of the criteria referenced by Mr.  
20 Andrea does not include property value.

21

22 Mr. Andrea requested clarification of which specific values are  
23 applicable with regard to this particular criterion.

24

25 **PAUL HOGAN** mentioned that he is specifically concerned with  
26 compatibility issues, observing that his two children attend Montclair  
27 School. Noting that there has been interference with that school inter-  
28 com system, he pointed out that receiving a broadcast from a Christian  
29 radio station is not compatible with the mission of the public school  
30 system. Observing that he serves as the Academic Vice-Principal at  
31 Jesuit High School, he noted that the intercom system is utilized for  
32 fires, drills, and lockdowns. Emphasizing that this system specifically  
33 addresses the protection and safety of both children and staff, he  
34 expressed his opinion that this interference creates a significant issue.

35

36 Referring to the interference experienced at Montclair School,  
37 Commissioner Maks questioned whether this interference only affects  
38 the PA loudspeakers, and specifically whether the walkie-talkies are  
39 also affected.

40

41 Mr. Hogan advised Commissioner Maks that he does not have this  
42 information, adding that several teachers have indicated that they are  
43 experiencing interference in various areas.

44

1        **SUSIE BRIGHTEN** stated that she would like to address an issue  
2 that has not been mentioned, specifically the negativity of the energy  
3 emitted by these towers. Observing that she is involved in studies  
4 with regard to the mysteries of life and healing, she referred to a book  
5 called *Light, Medicine of the Future*, which discusses different studies  
6 of wavelengths, the visible spectrum, the radio spectrum, and the  
7 electric spectrum. She mentioned a study that had been performed by  
8 Dr. Fritz Holovitz, which compares the effects of sitting beneath  
9 strong, artificial, cool white lights versus the full spectrum lighting,  
10 such as sunlight, which is balanced. She pointed out that the white  
11 light revises the undercurrent system, creating stress hormones, stunt-  
12 ing growth in children, agitating physical behavior, creating fatigue,  
13 and reducing mental capabilities. She noted that all of these symp-  
14 toms do not occur with natural full spectrum lighting, adding that it  
15 also boosts the immune system, similar to natural sunlight. Observing  
16 that white light is deficient with regard to the red and blue violet light,  
17 she emphasized that these cool white fluorescent bulbs have been  
18 legally banned in Germany in hospitals and medical facilities.

19  
20        Ms. Brighton described a study by Dr. John Ott with the  
21 Environmental, Health and Light Research Institute, observing that  
22 they had studied four First Grade classrooms with time-lapse cameras.  
23 She emphasized that with the full spectrum lighting, performance,  
24 behavior, and academic achievement had improved, adding that  
25 learning disabled children experiencing extreme hyperactivity had  
26 calmed down and overcame some learning and reading problems. She  
27 mentioned that it had also been noted that there were one third fewer  
28 cavities, and discussed a similar study by Sharon Fellerburny  
29 involving animals. Referring to a six-month study done by Dr. Daryl  
30 Boydharmon at the Texas Department of Health, she pointed out that  
31 full spectrum lighting had decreased problems involving vision, and  
32 nutrition. She emphasized that the full spectrum lighting balances  
33 and creates harmony, adding that anything beyond that causes  
34 disease. Concluding, she pointed out that this decision affects the  
35 health of all of the people in this area, and that this interference is a  
36 clear indication of the energy that is also affecting the community.

37  
38        **DAVE BOSWORTH** referred to his written testimony, specifically  
39 Exhibit 4.17, adding that he would make a non-scientific observation,  
40 adding that it is the highest order of the Planning Commission to  
41 address Goal 1, as indicated on the wall, which is to preserve and  
42 enhance our sense of community. He pointed out that the sole purpose  
43 of the second tower is to expand market share, which is merely an  
44 economic gain, expressing his opinion that this is in direct conflict with

1 the preservation and enhancement of our sense of community.  
2 Concluding, he expressed his appreciation of the spirit of the Planning  
3 Commission in their effort and long hours.  
4

5 **WARREN TYLER** stated that he is an elected official at the Montclair  
6 Local School Committee, adding that Montclair School enjoys a very  
7 positive relationship with Salem Communications. Observing that the  
8 students utilize the wetlands for study purposes, with permission from  
9 Salem Communications, he pointed out that they understand that this  
10 use is at own risk. He mentioned that his greatest concern is safety,  
11 and pointed out that this property involves reed canary grass, adding  
12 that he would prefer to see it replaced with authentic wetland grasses.  
13 Concluding, he observed that the Montclair School would prefer a radio  
14 tower site rather than R-7 housing at this location, adding that it is  
15 misleading to include a Condition of Approval with regard to parking  
16 lot paving, when this involves a boiler plate, rather than a parking lot.  
17

18 Commissioner Maks expressed his appreciation to Mr. Tyler for his  
19 participation, and questioned whether further information with regard  
20 to security ratings is available.  
21

22 Mr. Tyler advised Commissioner Maks that the principal had informed  
23 him that there had been no issues with regard to interference since the  
24 intercom system had been changed, adding that radios had not been  
25 discussed.  
26

27 Commissioner Winter requested clarification of whether Mr. Tyler is  
28 representing Montclair School with regard to this issue.  
29

30 Observing that he is publicly elected as a member of the local school  
31 committee, Mr. Tyler emphasized that this committee has taken no  
32 public stance with regard to this issue.  
33

34 Chairman Voytilla questioned whether there has been any interference  
35 with the telephone system at the school.  
36

37 Noting that the principal had not mentioned any interference with the  
38 school telephone system, Mr. Tyler pointed out that in the past, he had  
39 commented with regard to religious music playing over the intercom of  
40 a public school.  
41

42 **BEVERLY MATES** stated that in addition to concurring with issues  
43 mentioned by other members of the public, she is also concerned with  
44 the condition of the wetlands and drainage, particularly the copper

1 wires that would be installed, and the lack of an Environmental  
2 Assessment, adding that with regard to aesthetics, while one tower  
3 was more than enough, two towers are definitely too many.  
4

5 **PAUL KEPTOR** mentioned that his daughter is a student at Oregon  
6 Episcopal School, adding that most of his concerns have been  
7 addressed. He pointed out that in spite of 20 years of experience in the  
8 utility industry, it is difficult for him to consider this proposal a public  
9 utility. Noting that this facility does not meet the standards of a  
10 public utility, he explained that the Federal government defines a  
11 public utility as a municipal utility, a Federal agency, a public utility  
12 district, or an REA district, which provides for electric utility. He  
13 emphasized that these franchised utilities are able to provide gas,  
14 water, electric, and telecommunications, adding that this involves a  
15 product that is delivered to customer, and that it is owned by the  
16 public if it involves a public customer. Concluding, he expressed his  
17 support of staff's determination that this does not involve a public  
18 utility and recommendation for denial.  
19

#### 20 **APPLICANT REBUTTAL**

21  
22 Mr. Douglass addressed the interference issues, observing that the  
23 applicant is able to address those issues that have not been resolved.  
24 He mentioned Mr. Bosworth's comment with regard to expanding  
25 market share, emphasizing that the bottom line involves expanding  
26 the number of potential listeners who hear the gospel. He pointed out  
27 that in response to the claim that Oregon Episcopal School had  
28 purchased a new PA system due to interference from Salem  
29 Communications, he emphasized that they had not been aware of this  
30 issue and that he is not able to resolve any problem that he is not  
31 aware of. Concluding, he offered to respond to questions.  
32

33 In response to a comment by a member of the audience, Chairman  
34 Voytilla clarified that the opportunity for public testimony has passed.  
35

36 Mr. Osterberg clarified that while Mr. Douglass had indicated a will-  
37 ingness to receive direction from staff with regard to the placement of  
38 trees on the site for screening purposes, it is not staff's role to provide  
39 that particular type of assistance to an applicant in a landscape plan.  
40 Pointing out that although staff is eager to review any such plans  
41 provided by the applicant, he mentioned that no such plan has been  
42 provided at this time. He mentioned that the entire site is designated  
43 as a natural resource area, and responded a comment by the member  
44 of the public, observing that City Code Section 9.05.035 (City of



1 Beaverton Site Development Ordinance) requires an Environmental  
2 Assessment for any development within a Significant Natural  
3 Resource Area. Emphasizing that an Environmental Assessment with  
4 regard to this proposal has been submitted, he pointed out that the  
5 applicant's Tier 2 Environmental Assessment has also been submitted  
6 to the Corps of Engineers, who has approved their permit. Noting that  
7 staff is not deferring the role of the Planning Commission to the City  
8 Engineer, he mentioned that rather than claiming that this is a public  
9 utility, which would not require a Conditional Use Permit, staff has  
10 indicated that it is allowed as a private utility.

11  
12 Mr. Sparks noted that he has only one additional comment, and intro-  
13 duced a document into the record by reference, specifically a copy of  
14 PDI 96-001, adding that he is prepared to provide copies upon request.  
15 He briefly described this Planning Director's Interpretation from 1996,  
16 which addresses cellular towers, rather than radio towers, adding that  
17 it includes some findings that staff has found applicable and utilized  
18 towards expanding that interpretation. He emphasized that while  
19 staff acknowledges that this PDI involves cellular towers, rather than  
20 radio towers, they have also concluded that these uses are substan-  
21 tially similar in nature, which is basically that of a structure erected in  
22 the air for the transmission of radio signals at varying frequencies.

23  
24 Commissioner Bliss stated that rather than discussing private versus  
25 public, a cellular tower or utility is being equated to a radio station,  
26 adding that he is having difficulty understanding this concept and  
27 equating the two issues. He pointed out that cellular service involves  
28 signals traveling back and forth between various locations, while a  
29 radio signal is only received.

30  
31 Commissioner Maks requested clarification from Mr. Naemura,  
32 specifically whether a jurisdiction has to provide zoning to address a  
33 use, adding that if it does not, the jurisdiction has to address the issue  
34 in some fashion, such as a Planning Director's Interpretation.

35  
36 Mr. Naemura clarified that no Development Code is going to address  
37 every possible, foreseeable contingency, adding that every City  
38 interprets its Code on a regular basis. He pointed out that if the Code  
39 is silent with regard to a specific issue, or there is more than one  
40 possibility, it is necessary to interpret and determine the intent of the  
41 Code, adding that while this requirement has been addressed in this  
42 instance, this could conceivably be reviewed by the City Council, who is  
43 responsible for a final decision.

44

1 The public portion of the Public Hearing was closed.

2  
3 Referring to the requested CUP with regard to use, Commissioner  
4 Johansen pointed out that staff has cited the issue of interference, add-  
5 ing that in his opinion, the actions of the applicant have not adequately  
6 addressed the concerns of those individuals who reside in the area of  
7 the facility. He stated that he is in agreement with staff's position that  
8 this application does not satisfy all of the applicable approval criteria,  
9 specifically Section 40.05.15.C.3. Noting that while the discussion with  
10 regard to the Planning Director's Interpretation had been very inter-  
11 esting, he expressed his opinion that the City of Beaverton is dealing  
12 with incredibly weak ground, particularly when considering the sheer  
13 magnitude of the size of this facility, adding that this is very different  
14 than any application addressing a typical cellular tower and that he  
15 hopes this issue will be resolved at some point in the future. He dis-  
16 cussed the application for a CUP with regard to height, adding that he  
17 agrees with staff's position, and referenced staff's comment that "the  
18 application does not provide adequate evidence by which to conclude  
19 that the tower height and associated impact of height represents a  
20 minimal impact upon the livability of the surrounding neighborhood".  
21 Referring to the application for a TPP, he observed that he agrees with  
22 staff's indication that this proposal does not meet applicable criteria.  
23 Concluding, he stated that he would support motions to support staff's  
24 recommendation to deny all three applications.

25  
26 Commissioner Bliss stated that he is willing to accept Mr. Naemura's  
27 interpretation with regard to utilities, adding that he agrees with  
28 Commissioner Johansen's assessment with regard to the application  
29 for a CUP for use. He discussed the application for a CUP for height,  
30 expressing his objection to forcing individuals to listen to something  
31 over which they have no control, adding that this is not appropriate  
32 and he agrees with staff. He referred to the application for a TPP,  
33 adding that he also agrees with Commissioner Johansen. Concluding,  
34 he stated that he concurs with staff's recommendation and would  
35 support a motion to deny all three applications.

36  
37 Expressing his agreement with his fellow Planning Commissioners,  
38 Chairman Voytilla pointed out that Commissioner Johansen had  
39 provided an excellent summarization of the issues with regard to the  
40 applications. He mentioned that although the burden of proof falls  
41 upon the applicant, it had been frustrating to address these  
42 applications without all of the necessary information available.  
43 Concluding, he stated that he concurs with staff's recommendation and  
44 would vote to deny all three applications.

1 Commissioner Barnard stated that he has reached the same conclusion  
2 as staff in their recommendation for denial of all three applications,  
3 adding that the applicant's responses had not provided sufficient  
4 argument to convince him otherwise. Concluding, he pointed out that  
5 although it does appear that the applicant has attempted to address  
6 many of the concerns of the residents of the area, he supports staff's  
7 recommendation for denial of all three applications.

8  
9 Emphasizing that a livable community is comprised of compromise,  
10 Commissioner Mays expressed his appreciation of the testimony and  
11 comments that had been provided this evening. Referring to the TPP  
12 application, he noted that the applicant could possibly submit an  
13 appropriate application at some future point. Observing that the  
14 arborist report is tremendously lacking and that pictures would be  
15 appropriate, he expressed his support of staff's recommendation for  
16 denial of the TPP application. He discussed the CUP application with  
17 regard to height, he noted that the applicant had provided appropriate  
18 evidence demonstrating the need for the requested 196-feet, adding  
19 that it is not up to the Planning Commission to determine which  
20 screening measures are appropriate and that he agrees with staff's  
21 recommendation for denial of the CUP application with regard to  
22 height. He discussed the application for a CUP concerning use,  
23 expressing his disagreement with statements indicating that this  
24 facility is an eyesore. He pointed out that the site consists of 12.8  
25 acres of beautiful wetlands and natural habitat, adding that this tower  
26 does not create an eyesore, in his opinion. He emphasized that he  
27 would be very unhappy to have unsolicited information broadcasting  
28 over his telephone and computer speakers, adding that he is concerned  
29 with the quality and character of our neighborhoods and homes,  
30 adding that where we live is generally the most important issues to the  
31 citizens of the City of Beaverton. Concluding, he stated that he could  
32 not support these applications, adding that he might be willing to  
33 support a motion of denial without prejudice.

34  
35 Commissioner Winter stated that while he is not particularly  
36 concerned with the height or aesthetics, he concurs with his fellow  
37 Commissioners' comments and would support a motion to deny all  
38 three applications.

39  
40 Commissioner Pogue expressed his opinion that the applicant had  
41 missed the mark on their burden of proof with respect to these  
42 applications, specifically in overcoming issues and objections.  
43 Concluding, he stated that while he listens to and enjoys this radio

1 station, he agrees with staff's recommendation and would support the  
2 denial of all three applications.

3  
4 Commissioner Maks **MOVED** and Commissioner Barnard **SECOND-**  
5 **ED** a motion to **DENY WITHOUT PREJUDICE** CUP 2001-0033 –  
6 Salem Communications Broadcast Tower Conditional Use Permit  
7 (Use), based upon the testimony, reports and exhibits, and new  
8 evidence presented during the Public Hearing on the matter, and upon  
9 the background facts, findings and conclusions found in the Staff  
10 Report dated October 23, 2002, as amended, observing that this  
11 application does not meet Criterion 40.05.15.C.3 with regard to  
12 location, size, design, and functional characteristics of the proposal;  
13 Objective 3.4.2.11, which provides that various residential uses should  
14 be protected from the intrusion of incompatible uses in order to  
15 preserve and stabilize values and character of the area; and Policy  
16 3.4.3.A, which provides that certain private and public non-residential  
17 uses are necessary and should be permitted within residential areas  
18 for the convenience and safety of the people, however all non-  
19 residential uses should recognize and respect the character and quality  
20 of the residential area in which they are located and be so designed.

21  
22 Commissioner Johansen requested clarification of the intent of a  
23 motion to deny without prejudice.

24  
25 Commissioner Maks explained that while a typical denial would  
26 prevent this applicant from submitting a similar application on this  
27 property within one year, a denial without prejudice would allow this  
28 applicant to submit this application within this one-year period.

29  
30 Commissioner Johansen questioned which special circumstances in  
31 this particular case would warrant this consideration.

32  
33 Indicating that he does not feel that any special circumstances warrant  
34 this consideration for a motion for denial without prejudice,  
35 Commissioner Maks stated that in his opinion, the applicant had come  
36 closer to compliance with regard to the TPP and the CUP for height.  
37 He noted that if a request is denied by the Planning Commission and  
38 no appeal taken, upon review or appeal, the Council affirms the denial  
39 and denies the request and no new request for the same or  
40 substantially similar proposal shall be filed within one year after the  
41 date of final denial, unless the denial is specifically stated to be  
42 without prejudice, or unless, in the opinion of the Planning  
43 Commission, new evidence is submitted or conditions have changed to  
44 the extent that further consideration is warranted.

1 Observing that these applications had been continued several times,  
2 Commissioner Johansen expressed his opinion that the applicant had  
3 plenty of opportunity to discuss and resolve the issues, adding that he  
4 does not feel inclined to support a denial without prejudice. He  
5 emphasized that he is not aware of any special circumstances that  
6 would warrant this consideration.

7  
8 Commissioner Pogue pointed out that the denial without prejudice  
9 simply involves timing.

10  
11 Observing that he fully understands both points of view, Commissioner  
12 Barnard emphasized that he bears no ill will towards this applicant,  
13 and supports the idea of the 12-acre wetland and wildlife habitat,  
14 adding that if the applicant were to sell and parcel of this property the  
15 community could easily end up with something less desirable than the  
16 proposed broadcast tower.

17  
18 Commissioner Johansen pointed out that this does not involve a  
19 question of ill will, but an issue with establishing precedence.

20  
21 Commissioner Maks advised Commissioner Johansen that this does  
22 not involve establishing a precedence, noting that this has been done  
23 this many times.

24  
25 Commissioner Johansen noted that he could only recall one or two  
26 denials without prejudice during his service on the Planning  
27 Commission.

28  
29 Commissioner Maks pointed out that even one or two would not  
30 involve a precedent, observing that a precedent would be the first.

31  
32 Noting that he appreciates Commissioner Johansen's position,  
33 Commissioner Bliss emphasized that Salem Communications owns  
34 this property, are currently operating on this site and would not be  
35 going away. Noting that they are experiencing problems, he stated  
36 that a denial without prejudice would merely serve to move the process  
37 along without forcing the applicant to waste an additional year  
38 unnecessarily.

39  
40 Motion **CARRIED**, by the following vote:

41  
42

1           **AYES:**       Barnard, Bliss, Johansen, Bliss, Pogue, Voytilla  
2                               and Winter.

3           **NAYS:**       None.

4           **ABSTAIN:** None.

5           **ABSENT:** None.

6  
7           Commissioner Maks **MOVED** and Commissioner Barnard  
8           **SECONDED** a motion to **DENY WITHOUT PREJUDICE** CUP  
9           2001-0032 – Salem Communications Broadcast Tower Conditional Use  
10          Permit (Height), based upon the testimony, reports and exhibits, and  
11          new evidence presented during the Public Hearing on the matter, and  
12          upon the background facts, findings and conclusions found in the Staff  
13          Report dated October 23, 2002, as amended.

14  
15          Motion **CARRIED**, by the following vote:

16  
17          **AYES:**       Barnard, Bliss, Johansen, Bliss, Pogue, Voytilla  
18                               and Winter.

19          **NAYS:**       None.

20          **ABSTAIN:** None.

21          **ABSENT:** None.

22  
23          Commissioner Maks **MOVED** and Commissioner Barnard  
24          **SECONDED** a motion to **DENY WITHOUT PREJUDICE** TPP 2002-  
25          0003 – Salem Communications Broadcast Tower Tree Preservation  
26          Plan, based upon the testimony, reports and exhibits, and new  
27          evidence presented during the Public Hearing on the matter, and upon  
28          the background facts, findings and conclusions found in the Staff  
29          Report dated October 23, 2002.

30  
31          Motion **CARRIED**, by the following vote:

32  
33          **AYES:**       Barnard, Bliss, Johansen, Bliss, Pogue, Voytilla  
34                               and Winter.

35          **NAYS:**       None.

36          **ABSTAIN:** None.

37          **ABSENT:** None.

38  
39          **MISCELLANEOUS BUSINESS:**

40  
41          The meeting adjourned at 10:41 p.m.